IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

CRL.A.No. 1083 of 2002()

SC.246/2000 of ADDL. SESSIONS COURT (ADHOC), KOZHIKODE
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APPELLANT: ACCUSED

DILEEP, S/O. MADHAVAN,
KANDANCHAKKI VEETTIL, ENGANDIYOOR VILLAGE,
ENGANDIYOOR PANCHAYAT, CHAVAKKAD TALUK.

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CRL.M.P.NO.8545/2002 IN CRL.A.NO.1083/2002

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

01/11/2007

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K.R.UDAYABHANU, J.

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Crl.A.No.1083 of 2002-D

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Dated this the 1st day of November, 2007

J U D G M E N T

The appellant is the accused in S.C.No.246/2000 with respect to the offence under Section 55(a) of the Abkari Act and Rule 9 of the Foreign Liquor Rules who stands convicted and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,00,000/- and in default to undergo simple imprisonment for six months.

2. The prosecution case is that on 23/06/1998 at about 1.15 p.m the accused was found transporting 10 bottles of 375 ml. Haywards Fine brandy, two bottles of 750 ml. Golden Amber brandy and two bottles of 180 ml. Doctors Special No.1 brandy, carrying the same in a suitcase travelling in a bus bearing Registration No.KL 11/A 7846 from Mahe to Kerala. The accused was apprehended at Azhiyoor Check Post.

3. The prosecution evidence consisted of the testimony of PWs.1 to 8, Exts.P1 to P11 and MOs.1 series to 4. PW.4 the Excise Inspector on special duty at Azhiyoor Check Post and PW.5 the Assistant Excise Inspector who was along with PW.4 are the official

witnesses who detected the offence. PWs.6 and 7 are the conductor and driver of the particular bus who turned hostile. Both the above witnesses have deposed as to the apprehension of the accused from the particular bus along with the contraband.

4. The only contention put forward is that there is a contradiction in the version of PWs.4 and 5 as PW.4 has stated that he has seen the accused sitting with the bag containing the contraband in his lap and PW.5 has stated that the accused was found standing and the bag containing the contraband was in the seat. I find that both the witnesses have stated about the presence of the accused in the bus along with the contraband. The alleged contradiction mentioned I find can only be on account of the difference in time when both the witnesses located the accused and that the same cannot be treated as a material contradiction. In the circumstances I find that the evidence of PWs.4 and 5 tally on material particulars.

5. It was also contended that the bus ticket which has been taken into custody as per the seizure mahazar has not been produced and hence, there is no accurate evidence as to the fact alleged that the accused was travelling from Mahe to Kerala. I find that the non

production of the bus ticket alone cannot be the basis that enable the accused for acquittal, as the evidence of PWs.4 and 5 establish the fact that the accused was found travelling in the bus that was proceeding from Mahe to Kerala and that it was at the check post that the accused was caught. With respect to the rest of the formalities of the investigation PWs.2 and 3 the Excise Inspector and the Preventive Officer have testified and PW.1 the Village Officer has proved the site plan. Ext.P10 is the chemical analysis report that establish the fact that the contraband contained ethyl alcohol and Ext.P11 is the forwarding note. In the circumstances I find that the order of the court below is a well considered order and no interference is called for with respect to the findings that the accused is guilty of the offences alleged. Hence, the conviction is confirmed.

6. Regarding the sentence the counsel for the appellant has pleaded for leniency pointing out that about 10 years have elapsed since the date of the commencement of the proceedings and that so far the accused was facing the criminal proceedings and that his family is solely depending on the earnings of the appellant. In the circumstances and also considering the nature of the offence and that the article is not spurious liquor the sentence is modified to

imprisonment till the rising of the court and to pay a fine of rupees one lakh and in default to undergo simple imprisonment for six months. The appellant is granted four months time to remit the fine amount. He he shall appear before the Additional District & Sessions Judge (Ad hoc-II) Kozhikode, on 01/03/2008 to receive the sentence.

The criminal appeal is disposed of as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.A.No.1083 of 2002-D

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J U D G M E N T

1st November, 2007